

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TIMOTHY SCOTT GAMBLE,)
)
)
Plaintiff,)
)
)
v.) **CIV-04-1624-R**
)
)
RENEE McGRUDER CLINE, et al.,)
)
)
Defendants.)

O R D E R

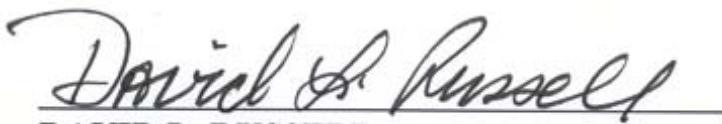
Before the Court is the Report and Recommendation of United States Magistrate Judge Gary M. Purcell entered October 26, 2005. Also before the Court are Plaintiff's Objection to the Report and Recommendation and his Request to Stay Proceedings. In both his objection and his request, Plaintiff asks that the Court stay this action rather than dismiss it for failure to exhaust administrative remedies as to all claims. Plaintiff makes no other objection to the Report and Recommendation.

Plaintiff's Request to Stay Proceedings, [Doc. No. 40], treated as a motion to stay, is DENIED. Plaintiff's objection to dismissal rather than a stay is without merit. Under the current version of 42 U.S.C. § 1997e, dismissal rather than a stay of an action in which the claims are not fully exhausted is mandatory. *See Ross v. County of Bernalillo*, 365 F.3d 1181, 1189 (10th Cir. 2004) (the presence of unexhausted claims in a complaint requires dismissal of the complaint without prejudice pursuant to 42 U.S.C. § 1997e(a)); *Garrett v. Hawk*, 127 F.3d 1263, 1265 (10th Cir. 1997) (under the pre-PLRA version of § 1997e, courts were to stay actions not administratively exhausted provided a stay was appropriate and in

the interests of justice; under the PRLA version of § 1997e, exhaustion is mandatory), abrogated on other grounds by *Booth v. Churner*, 532 U.S. 731, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001). *See also Boulden v. Tafoya*, 37 Fed. Appx. 974 (10th Cir. June 21, 2002) (No. 02-2024).

The Report and Recommendation of the Magistrate Judge is, therefore, ADOPTED in its entirety; the motion of Defendants Renee Cline and Melinda Guilfoyle for summary judgment on Plaintiff's claims for damages against them in their official capacities [Doc. No. 33] is GRANTED; the motion of Defendants Renee Cline and Melinda Guilfoyle to dismiss Plaintiff's claims against them in their individual capacities for failure to exhaust administrative remedies [Doc. No. 33] is GRANTED; Plaintiff's Complaint against Defendants Cline and Guilfoyle is DISMISSED without prejudice; Plaintiff's Complaint against Defendants Dwayne Branu, Jewel Beasley and L. Schlumbohm is DISMISSED without prejudice *sua sponte* for failure to exhaust administrative remedies; and the motion of Defendants Branu, Beasley and Schlumbohm for summary judgment on Plaintiff's Complaint [Doc. No. 30] is DENIED as moot.

It is so ordered this 21st day of November, 2005.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE